THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AN
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL No.2176 of 2005

JUDGMENT (per Hon'ble Sri Justice Ramesh Ranganathan)

DATE: 22-6-2006

Between:
Tirumala Tirupati Devasthanams .... Appellant
Tirupati rep. by its Executive Officer

And
1. P.Jagadeesh Babu ... Respondents
and another

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AN
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL No.2176 of 2005

JUDGMENT (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri A.K.Jayaprakash Rao, learned counsel for the appellant, Sri D.V.Seetharama Murthy, learned counsel for the 1st respondent and the learned Government Pleader for the 2nd respondent and at their request the writ appeal is being finally disposed of.

This appeal is filed, by the Tirumala Tirupathi Devasthanams (TTD), aggrieved by the order passed in W.P.No.1355 of 2005 dated 3.8.2005 whereby the Executive Officer of the TTD was directed to implement the orders of the Government dated 17.1.2004, and if the seniority of any of the juniors or persons named in para-6 of the counter affidavit filed in the writ petition was likely to be affected, while implementing the order, an opportunity of being heard was to be given to those persons and thereafter appropriate orders were to be passed within a period of two months from the date of receipt of a copy of the order.

Pursuant to a representation submitted by the 1st respondent herein, (the petitioner in the writ petition), requesting the appellant herein to fix his roster point and give notional

seniority and promotion as per rules, the then Executive Officer, vide letter dated 9.6.2003, requested the 2nd respondent to issue a clarification as to whether the claim of the 1st respondent – writ petitioner for seniority above Sri B.O.Devakumar, on the ground that he was recruited against a brought forward S.C. vacancy, (even though he had joined duty on 15.3.1979 after Sri B.O.Devakumar had joined duty on 6.1.1979 and the appointment order was issued to Sri B.O.Devakumar on 6.1.1979 prior to the appointment order of the writ petitioner dated 2.3.1979), could be entertained or not.

The 2nd respondent - State Government, vide memo dated 17.1.2004, observed that while filling up vacancies of Assistant Engineers during 1979 the instructions issued in G.O.Ms.No.277 dated 22.3.1976 should have been followed whereunder paragraph 4(iv) and (v) provided that vacancies brought forward from the previous year shall be filled up first before the cycle of rotation was continued from the last point of the previous recruitment year. The 2nd respondent – Government advised the appellant herein to restore the ranking of the writ petitioner in the panel/seniority list of the recruitment made in 1979 as he was initially appointed as an Assistant Engineer by direct recruitment under S.C. backlog post roster point 2/1 of 1976 carried forward to the year 1979 and assign the date of regularization of the 1st respondent – writ petitioner, recruited against the brought forward vacancy of the previous year, above all Assistant Engineers appointed in January, 1979 as per the cycle of rotation continued from the last point of the previous recruitment year. It is this memo of the 2nd respondent dated 17.1.2004 which the learned

single Judge in W.P.1355 of 2005 had directed implementation of.

Sri A.K.Jayaprakash Rao, learned counsel for the appellant, would submit that the seniority list dated 25.10.1985 was being challenged in 2005 after a lapse of 20 years. Learned counsel would refer to the reply submitted by the 1st respondent – writ petitioner on 26.2.2003 wherein he had categorically stated that though the seniority list had been communicated in the year 1983, inviting objections, he did not submit his objections as he was unaware of the panel and roster system. Learned counsel would contend that a belated challenge to the seniority list, 20 years after it was finalized, must be rejected more so when the 1st respondent – writ petitioner was all along aware of the final seniority list. Learned counsel would further contend that, if the memo of the Government dated 17.1.2004 was directed to be implemented, the very requirement of putting persons, seniors to the 1st respondent – writ petitioner in the seniority list, on notice and giving them an opportunity of being heard would be an empty formality since the government memo dated 17.1.2004 required the 1st respondent – writ petitioner to be placed above those appointed in January, 1979, in the seniority list of Assistant Enginneers. Learned counsel would refer to the counter affidavit filed in the writ petition to submit that there are six employees (1) Sri N.Manoharan (2) Sri B.O.Devakumar (3) Sri T.Venkateswarlu (4) Sri U.V.Subrahmanyam (5) Sri C.Ravivarma (6)Sri N.Nadamuni who were selected and appointed as Assistant Engineers by proceedings dated 6.1.1979, prior to the 1st respondent – writ petitioner's appointment on 2.3.1979 and that implementation of the government memo dated 17.1.2004 would necessitate the 1st

respondent – writ petitioner being placed above these six employees in the seniority list of Assistant Engineers.

While both Sri Sri A.K.Jayaprakash Rao, learned counsel for the appellant and Sri D.V.Seetharama Murthy, learned counsel for the 1st respondent – writ petitioner would make submissions on the validity or otherwise of the government memo dated 17.1.2004, on a query from this court as to whether the aforesaid six employees were heard by the Government, before Memo dated 17.1.2004 was issued, both counsel would fairly agree that the government memo dated 17.1.2004 was issued without putting these six employees on notice and without given them an opportunity of being heard. As already noted, the government memo dated 17.1.2004 requires the appellant herein to place the 1st respondent – writ petitioner above the aforementioned six employees in the seniority list of Assistant Engineers. Such a direction, though couched as an advice to revise the seniority list, could not have been given without putting the persons, likely to be adversely affected, on notice and without giving them an opportunity of being heard. Since the government has already decided the issue, in its Memo dated 17.1.2004, the direction of the learned Single Judge to implement the government memo dated 17.1.2004 would, in effect, render the consequential direction, of putting these six employees on notice, an empty formality, since even if the appellant were to hear these six employees, as directed by the learned Single Judge, the other direction, to implement the government memo dated 17.1.2004, would render the very opportunity of hearing given to the affected six employees a mere ritual.

The order of the learned single judge, to the extent the appellant herein has been directed to implement the orders of the government dated 17.1.2004, is set aside. However, in compliance with the order of the learned single Judge, the appellant herein shall give an opportunity of hearing to the 1st respondent – writ petitioner and all other affected persons and take an independent decision, without being influenced by the government memo dated 17.1.2004, as to whether or not the seniority list of Assistant Engineers requires revision.

While the contention of Sri A.K.Jayaprakash Rao, learned counsel for the appellant, with regards the belated challenge by the 1st respondent – petitioner to the seniority list of Assistant Engineers cannot be said to be without merit, we do not propose to examine this question since these are all matter for the appellant herein to decide after putting the 1st respondent – writ petitioner and other affected persons on notice and after giving them a reasonable opportunity of being heard. The entire exercise in this regard shall be completed by the appellant herein within a period of 3 months from the date of receipt of a copy of this order.

Writ Appeal No.2176 of 2005 is allowed in part to the extent indicated above. However, in the circumstances, without costs.

_____

(B.PRAKASH RAO,J)

Date: -06-2006

_____

(RAMESH RANGANATHAN,J)